THE HON'BLE SMT. JUSTICE T. MEENA KUMARI

AND

THE HON'BLE Ms JUSTICE G. ROHINI

WRIT PETITION No.26213 of 2007

ORDER: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed seeking a *writ of certiorari* calling for records relating to the proceedings in CCT,s Ref.No.LIII(3)/199/2007 dated 21.9.2007 issued by the Joint Commissioner (CT)., (Legal), Hyderabad, rejecting the application for stay of collection of the disputed tax of Rs.31,72,275/- for the assessment year 2000-01 and quash the same as illegal arbitrary, improper, unjust and consequently to direct the 3rd respondent not to take any coercive steps for realization of the balance of the disputed tax of Rs.18,37,115/- out of the total disputed tax of Rs.31,72,275/- disputed in the Appeal before the Sales Tax Appellate Tribunal, Hyderabad.

The petitioner-M/s K.C.V.R. Constructions, Ananthapur is a contractor executing works awarded to it. The assessment for the year 2000-01 under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the Act") was completed by the 3rd respondent/Commercial Tax Officer-II, Ananthapur, on 26.03.2003 in G.I.No.8003/2000-01. The assessing authority subjected the turnover on transfer of property in goods to tax at the rate of 8% in terms of Section 5F of the Act. The 2nd respondent/revisional authority claimed to have examined the assessment order and found it to be prejudicial to the interests of revenue, proposed to revise the assessment in exercise of the powers conferred under Section 20(2) of the Act and issued a show cause notice, to which an elaborate reply was given by the petitioner contending that the revision proposed by the authority on

the basis of audit objections is improper and contrary to the law laid down by the Hon'ble Supreme Court. It was further contended that the levy on the expenditure incurred towards mining and geology charges cannot be subject to tax and accordingly a request was made to drop the revision. However, without considering the contentions raised by the petitioner, the revisional authority passed orders dated 14.12.2006. Aggrieved by the said order, the petitioner filed an Appeal along with an application for stay before the Sales Tax Appellate Tribunal on 23.4.2007. Though the Appeal was taken on file, the 1st respondent by order dated 21.9.2007, rejected petitioner's application for stay. Hence this writ petition seeking stay of collection of the disputed tax, pending disposal of the Appeal.

Having heard the learned Counsel for the petitioner as well as the Special Standing Counsel for Commercial Taxes appearing for the respondents and in view of the fact that the Appeal preferred by the petitioner is pending before the 1st respondent, we are of the opinion that interest of justice would be adequately met if stay is granted pending Appeal subject to certain conditions.

Accordingly, the Writ Petition is disposed of granting stay of recovery of the disputed tax pending Appeal before the 1st respondent subject to the petitioner depositing half of the disputed tax, after giving credit to the amounts already paid, within a period of six weeks from today. However, in the event of failure to deposit half of the disputed tax within the time stipulated above, the impugned order would stand operative.

It is made clear that the amount deposited in compliance with this order shall be without prejudice to the rights of the petitioner in the Appeal.

With the above observation, the Writ Petition is disposed of. No costs.

_____

T.MEENA KUMARI, J.

_____

G. ROHINI, J

10th December, 2007.

Kgr

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI

AND

THE HON'BLE Ms JUSTICE G. ROHINI

WRIT PETITION No.26213 of 2007

Between:

M/s K.C.V.R. Constructions, Ananthapur,
Ananthapur District, represented by its
Managing Partner – K.C. Venkata Reddy. .. Petitioner.

And

Joint Commissioner of Commercial Taxes (Legal),
O/o Commissioner of Commercial Taxes,
C.T. Complex, M.J. Road, Nampally,
Hyderabad and others. .. Respondents.